



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0622; FRL-9798-5]

Approval and Promulgation of Implementation Plans; Georgia:

New Source Review-Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD) to EPA, on September 26, 2006 (with a clarifying revision submitted on November 6, 2006), and July 26, 2012. The September 26, 2006, SIP submission makes multiple changes to the Georgia SIP including the State's permit exemption provisions. The July 26, 2012, submission includes changes to Georgia's New Source Review (NSR), Prevention of Significant Deterioration (PSD) program to incorporate by reference (IBR) federal PSD requirements regarding the implementation of the fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) and the deferral of, until July 21, 2014, PSD applicability to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources as well as additional air quality rule revisions. EPA is approving portions of these submittals as revisions to Georgia's SIP because the Agency has determined that they are consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting. EPA is also responding to comments received on the January 14, 2012,

proposed rulemaking.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0622. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Georgia SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4,

61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bradley's telephone number is (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For information regarding NSR or PSD, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562-9241; e-mail address: adams.yolanda@epa.gov. For information regarding the PM_{2.5} NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562-9104; e-mail address: huey.joel@epa.gov.

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I. Background

EPA is taking final action to approve portions of Georgia's July 26, 2012, and September 26, 2006 (with a clarifying revision submitted on November 6, 2006)¹ SIP submittals. The July 26, 2012, submission revises Georgia's SIP at Air Quality Control Rule 391-3-1-.02(7) –

¹ On September 26, 2006, Georgia submitted to EPA multiple SIP revisions to Georgia's Air Quality Rules found at Chapter 391-3-1. A clarifying revision was submitted on November 6, 2006. EPA took action on a portion of Georgia's September 26, 2006, submittal in multiple actions published in the Federal Register on February 9, 2010 (75 FR 6309) and December 1, 2010 (75 FR 74624). Action on the remaining portions of the September 26, 2006, submittal is still under consideration and will be addressed in separate actions. *See* 75 FR 74624.

Prevention of Significant Deterioration of Air Quality to IBR² the version of 40 CFR 52.21 as of July 20, 2011, including certain federal NSR permitting requirements promulgated in the: (1) “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) Significant Monitoring Concentration (SMC), Final Rule,” 75 FR 64864 (October 20, 2010), (hereafter referred to as the “PM_{2.5} PSD Increment –SILs-SMC Rule”);³ (2) “Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs,” Final Rule, 76 FR 43490 (July 20, 2011) (hereafter referred to as CO₂ Biomass Deferral Rule); and (3) EPA’s interim rulemaking entitled “ Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions,” 76 FR 17548 (March 30, 2011) (hereafter referred to as the “Fugitive Emissions Interim Rule”). The July 26, 2012, submittal also requests that EPA remove from the SIP the exclusion language at Rule 391-3-1-.02(7) regarding the coarse particle pollution (PM₁₀) surrogate and grandfathering provision promulgated in the “Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers” Rule, 73 FR 28321 (May 16, 2008) (hereafter referred to as “NSR PM_{2.5} Rule”) and amends the following regulations: (1) Rule 391-3-1-.01(nnn) – *Definitions* regarding testing and monitoring of air pollutants; (2) Rule 391-3-1-.02(2)(c) – *Incinerators*; and (3) Rule 391-3-1-.03(6) – *Exemptions*. The September 26, 2006, SIP submittal adds new text at 391-3-1-.03(6)(i)(3) regarding Georgia’s permit exemptions.

²Throughout this document IBR means “incorporate by reference” or “incorporates by reference.”

³ As is explained later in this final action, EPA is not taking action to approve either the SILs or SMC portions of that rule. Further, EPA’s January 14, 2013, proposed rule did not include a proposal to approve Georgia’s SILs submission.

On January 14, 2013, EPA published a proposed rulemaking to approve many of the aforementioned changes to Georgia's SIP. *See* 78 FR 2872. Details regarding these changes and EPA's final action are summarized below in Section II. EPA's January 14, 2013, proposed rulemaking contains more detailed information regarding Georgia's SIP revisions being approved today and the rationale for today's final action. Comments on the proposed rulemaking were due on or before February 13, 2013. EPA received one set of comments, and is responding to the comments relevant to today's final action which is not acting on everything that was included in the January 14, 2013, proposal, due to a recent court decision. Pursuant to section 110 of the CAA, EPA is now taking final action to approve certain changes to Georgia's SIP.

In this rulemaking EPA is not taking final action on portions of the July 26, 2012, SIP submittal regarding Georgia's request for incorporation of the PM_{2.5} SILs and SMC thresholds as promulgated in EPA's PM_{2.5} PSD Increment-SILs-SMC Rule. EPA will initiate a separate action to address these portions of the submittal. See below for more explanation on the SILs and SMC thresholds. Additionally, Georgia's July 26, 2012, submittal included certain rules that are not a part of Georgia's federally-approved SIP. As a result, EPA is not taking action on those rules, which are as follows: Rules 391-3-1-.02(www) – *Sewage Sludge Incineration*, 391-3-1-.03(9) – *Permit Fees*, 391-3-1-.02(8)(b) - *New Source Performance Standards* and 391-3-1-.02(9)(b) – *Emissions Standards for Hazardous Air Pollutants*, as these regulations are not part of Georgia's federally-approved SIP.

A. PM_{2.5} PSD Increment SILs-SMC Rule

The PM_{2.5} PSD Increment-SILs-SMC Rule provided additional regulatory provisions under the PSD program regarding the implementation of the PM_{2.5} NAAQS for NSR including: (1) PM_{2.5} increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC, (also a screening tool) used by a major source subject to PSD to determine the subsequent level of PM_{2.5} data gathering required for a PSD permit application. PSD increments prevent air quality in attainment/unclassifiable areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate “significant deterioration”⁴ of air quality for a pollutant in an area. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility “will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant.” When a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. As described in the PM_{2.5} PSD Increment-SILs-SMC Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical PSD increments for PM_{2.5} as a new pollutant⁵ for which NAAQS were established after August

⁴ Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the “maximum allowable increase” of an air pollutant allowed to occur above the applicable baseline concentration for that pollutant. Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

⁵ EPA generally characterized the PM_{2.5} NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM₁₀ NAAQS with the NAAQS for PM_{2.5} when the PM_{2.5} NAAQS were promulgated in 1997. EPA rather retained

7, 1977,⁶ and derived 24-hour and annual PM_{2.5} increments for the three area classifications (Class I, II and III) using the “contingent safe harbor” approach. *See* 75 FR 64869 and the ambient air increment tables at 40 CFR 51.166(c)(1) and 52.21(c). In addition to PSD increments for the PM_{2.5} NAAQS, the PM_{2.5} PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for “*major source baseline date*” and “*minor source baseline date*” (including trigger date) to establish the PM_{2.5} NAAQS specific dates associated with the implementation of PM_{2.5} PSD increments. *See* 75 FR 64864.

For background purposes, the SILs and SMC portions of the PM_{2.5} PSD Increment-SILs-SMC Rule, which EPA is not taking action on today, are numerical values that represent thresholds of insignificant modeled source impacts or monitored (ambient) concentrations, respectively. EPA established such values to be used as screening tools by a major source subject to PSD to determine the subsequent level of analysis and data gathering required for a PSD permit application for emissions of PM_{2.5}.

The Sierra Club challenged EPA’s authority to implement the PM_{2.5} SILs and SMC for PSD purposes as promulgated in the October 20, 2010, PM_{2.5} PSD Increment-SILs-SMC Rule. On January 22, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued an order vacating and remanding to EPA for further consideration the portions of its PM_{2.5} PSD Increment-SILs-SMC Rule addressing the PM_{2.5} SILs, except for the parts codifying the PM_{2.5} SILs in the NSR rule at 40 CFR 51.165(b)(2). *See Sierra Club v. EPA*, 705 F.3d 458, 469.

the annual and 24-hour NAAQS for PM_{2.5} as if PM_{2.5} was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2012).

⁶ EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

The court also vacated parts of the PM_{2.5} PSD Increment-SILs-SMC Rule establishing the PM_{2.5} SMC, finding that the Agency had exceeded its statutory authority with respect to these provisions. *Id.* The D.C. Circuit Court's decision can be found in the docket for today's rulemaking at www.regulations.gov using docket ID: EPA-R04-OAR-2012-0622.

As a result of D.C. Circuit Court's decision, EPA is not taking action at this time on any portions of Georgia's PSD SIP submission regarding the PM_{2.5}SILs and SMC provisions described at 40 CFR 51.166 and 52.21, which have now been vacated and remanded. Georgia's July 26, 2012, SIP revision IBR both the PM_{2.5} SIL and SMC screening tools promulgated in EPA's October 20, 2010, PM_{2.5} PSD Increment-SILs-SMC Rule. In the January 14, 2013, proposed rulemaking, EPA proposed to approve into the Georgia SIP the PM_{2.5} SMC but not the PM_{2.5} SILs. While the Agency proposed to approve the SMC in the January 14, 2013, proposed rule, the Agency is not moving forward with this proposed approval as a result of the court's January 22, 2013, decision. EPA will consider Georgia's January 26, 2012, SIP revision (and EPA's previous proposal) with regard to the PM_{2.5} SILs and SMC thresholds in an action separate from today's rulemaking.

B. CO₂ Biomass Deferral

As was explained in more detail in EPA's January 14, 2013, proposed rulemaking, EPA's CO₂ Biomass Deferral Rule defers until July 21, 2014, the consideration of CO₂ emissions from bioenergy and other biogenic sources (hereafter referred to as "biogenic CO₂ emissions") when determining whether a stationary source meets the PSD and title V applicability thresholds,

including those for the application of best available control technology.⁷ See 76 FR 43490. EPA incorporated the biomass deferral into the regulations governing state programs and into the federal PSD program by amending the definition of “*subject to regulation*” under 40 CFR 51.166 and 52.21 respectively. The deferral is intended to be a temporary measure, in effect for no more than three years, to allow EPA time to conduct detailed examination of the science and technical issues related to accounting for biogenic CO₂ emissions, and determine what, if any, treatment of biogenic CO₂ emissions should be in the PSD and title V programs. The deferral applies only to biogenic CO₂ emissions and does not affect non-greenhouse gas (GHG) pollutants or other GHGs (e.g., methane and nitrous oxide) emitted from the combustion of biomass fuel.

C. Fugitive Emissions Interim Rule

⁷On June 3, 2010, EPA promulgated the GHG Tailoring Rule (which include CO₂, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride) which tailored the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. EPA established in the GHG Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG emitters. See 75 FR 31514. Please refer to the July 12, 2012, rulemaking finalizing GHG Tailoring Rule Step 3. See 77 FR 41051. On January 13, 2011, EPD submitted a SIP revision to EPA to IBR into the Georgia SIP (at 391-3-1-.02(7)), the version of 40 CFR 52.21 as of June 3, 2010, which included the GHG Tailoring Rule thresholds. EPA took final action to approve Georgia’s SIP revision on September 8, 2011. See 76 FR 55572. Georgia’s submittal also revised the State’s title V operating permit provisions (which are not included in the federally approved SIP) to incorporate the GHG Tailoring Rule provisions. As such, EPA did not take final action to approve Georgia’s update to its title V. As with the Tailoring Rule, the Biomass Deferral addresses both PSD and title V requirements. However, as part of this action EPA is only taking action on Georgia’s PSD program.

EPA's Fugitive Emissions Interim Rule extends the Agency's March 31, 2010,⁸ stay of the original December 19, 2008, Fugitive Emissions Rule reverting the CFR text back to the language that existed prior to the December 19, 2008, Fugitive Emissions Rule changes regarding the treatment of fugitive emissions.⁹ *See* 73 FR 77882. EPA plans to issue a final rule affirming the interim rule as final. The final rule will remain in effect until EPA completes its reconsideration of the Natural Resource Defense Counsel's (NRDC) petition. *See* 78 FR 2872.

D. PM_{2.5} Grandfathering Provision

EPA's PM_{2.5} grandfather provision (established in the 2008 NSR PM_{2.5} Rule) allowed PSD applicants that submitted a complete permit application prior to July 15, 2008, to continue relying upon the 1997 PM₁₀ Surrogate Policy rather than amend their application to demonstrate compliance directly with the new PM_{2.5} requirements. *See* 73 FR 28321. On January 13, 2011, Georgia submitted a SIP revision to IBR into the Georgia SIP the version of 40 CFR 52.21 as of June 3, 2010 which included language that excluded the grandfathering exemption (at 40 CFR 52.21(i)(1)(xi)) from the state's PSD regulations (at Rule 391-3-1-.02(7)(b)(6)(i)) ensuring that sources were not subject to the grandfathering provision. EPA approved Georgia's January 13, 2011, SIP revision on September 8, 2011 (76 FR 55572). On May 18, 2011, EPA repealed the

⁸ After granting NRDC petition for reconsideration of the Fugitives Rule, EPA stayed the 2008 rule for 18 months to October 3, 2011 on March 31, 2010, allowing the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations.

⁹ The December 19, 2008, final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the CAA. Pursuant to CAA section 302(j), examples of these industry sectors include oil refineries, Portland cement plants, and iron and steel mills.

PM_{2.5} grandfathering provision¹⁰ at 40 CFR 52.21(i)(1)(xi). *See* 76 FR 28646. Georgia's July 26, 2012, SIP submittal incorporates into the Georgia SIP the version of 40 CFR 52.21 as of July 20, 2011, including the May 18, 2011, repeal of the grandfather provision. Thus, the PM_{2.5} grandfathering exclusion language previously approved into Georgia's SIP at Rule 391-3-1-.02(7)(b)(6)(i) is no longer necessary. Georgia's July 26, 2012, SIP submittal removes the unnecessary language pertaining to the removal of the grandfather provision from Rule 391-3-1-.02(7)(b)(6)(i).¹¹

In addition to updates to Rule 391-3-1-.02(7), the July 26, 2012, SIP revision also (1) amends Georgia's definitions at 391-3-1-.01 by revising subparagraph (nnnn) to reference the February 1, 2012, update to Georgia's "Procedures for Testing and Monitoring Sources of Air Pollutants;" (2) revises Rule 391-3-1-.02(2) – *Incinerators* to add exemptions to subparagraph (c)(6)(ix)-(xiii) to exempt certain incinerators from the state rule that are subject to more stringent, state adopted federal standards at Rule 391-3-1.02; and (3) modifies Georgia's provisions at Rule 391-3-1-.03(6)(i)(4) regarding permit exemptions. Georgia's September 26, 2006, SIP (with a clarifying revision submitted on November 6, 2006) revises the permit exemption provisions at Rule 391-1-.03(6)(i)(3). Both 391-3-1-.03(6)(1)(3) and the provision at (i)(4) provide exemptions from the requirement of a source to obtain a SIP permit for cumulative

¹⁰ In the May 16, 2008, NSR PM_{2.5} Rule, EPA finalized regulations to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and nonattainment areas including the grandfather provision. *See* 73 FR 2832.

¹¹ Georgia's previous incorporation by reference of 40 CFR 52.21 at 391-3-1-.02(7) was as of June 3, 2010, which did not include the May 18, 2011, repeal of the PM₁₀ Surrogate Policy; therefore the grandfathering exclusion language at 391-3-1-.02(7)(b)(6)(i) was necessary at that time. The June 3, 2010, IBR date was approved into the Georgia SIP on September 8, 2011. *See* 76 FR 55572

modifications where the combined emission increases are below specific *de minimis* thresholds.¹²
See 78 FR 2872.

II. This Action

EPA is taking final action to approve into the Georgia SIP portions of the State's July 26, 2012 and September 26, 2006 (as clarified on November 6, 2006) SIP revisions. Georgia's Rule 391-3-1-.02(7) IBR the federal NSR PSD regulations at 40 CFR 52.21 into the Georgia SIP. EPD's July 26, 2012, SIP revision IBR the version of 40 CFR 52.21 at 391-3-1-.02(7) as of July 20, 2011. By IBR the version of 40 CFR 52.21 effective on July 20, 2011, this revisions incorporates into the Georgia SIP the numerical PM_{2.5} PSD increments promulgated in the PM_{2.5} PSD Increment-SILs-SMC Rule (pursuant to section 166(a) of the CAA) at 40 CFR 52.21(c) including the amendments to "*major source baseline date*" (at 40 CFR 52.21(b)(14)(i)(c)); "*minor source baseline date*" and establishment of the "trigger date" (40 CFR 52.21(b)(14)(ii)(c)); and the definition of "*baseline area*" (at 40 CFR 52.21(b)(15)(i) and (ii)). Regarding the PM_{2.5} SILs and SMC provisions, in light of the D.C. Circuit Court January 22,

¹² The September 26, 2006, SIP revision to Rule 391-3-1-.03(6)(i)(3) adds text that excludes contemporaneous emission decreases from the combined emission increases for cumulative modifications when determining if they are below specific emission thresholds for carbon monoxide, lead, particulate matter, PM₁₀, sulfur dioxide, nitrogen oxide, volatile organic compounds and any hazardous air pollutant applicable to any existing source. The July 26, 2012, SIP revision, adds Rule 391-3-1-.03(6)(i)(4) which is an alternative to the exemption in (i)(3) that only applies to small modifications at existing quarry sources that are not major sources where the combined emission increases can include contemporaneous emission decreases from all nonexempt modified activities and are less than 10 tons per year of particulate matter and PM₁₀. Neither exemption may be used to lower the potential to emit below "major source" thresholds, or avoid any "applicable requirement" as defined in 40 CFR Part 70.2. *See* Georgia Rule 391-3-1-.03(6).

2013, court order to remand and vacate the SILs back to the Agency and vacate the SMC, EPA is not taking action on the portion of the submittal containing the SILs or SMC.

In addition, the July 26, 2012, submission IBR the CO₂ Biomass Rule, thus deferring until July 21, 2014, the consideration of “biogenic CO₂ emissions” when determining whether a stationary source meets the PSD and title V applicability thresholds by updating the definition for “*subject to regulation*.” The submission IBR date as serves to include in the Georgia SIP the extension of the stay in the Fugitive Emissions Interim Rule.

The July 26, 2012, SIP submission also (1) IBR the May 18, 2011, repeal of the PM_{2.5} grandfathering provision thereby removing the unnecessary grandfathering exclusion language from Rule 391-3-1-.02(7)(b)(6)(i); (2) amends Georgia’s definition at 391-3-1-.01 subparagraph (nnnn) “Procedures for Testing and Monitoring Sources of Air Pollutants;” (3) revises Georgia’s incinerator regulations at 391-3-1-.02(2) by adding exemptions to subparagraphs (c)(6)(ix)-(xiii) to exempt certain incinerators from the state rule that are subject to more stringent, state adopted federal standards at Rule 391-3-1.02; and (4) modifies Georgia’s provisions at Rule 391-3-1-.03(6)(i)(4) regarding permit exemptions.

Lastly, EPA is taking final action to approve Georgia’s September 26, 2006, SIP submission (as clarified on November 6, 2006) which revises the permit exemption provisions at Rule 391-1-.03(6)(i)(3). The changes to Georgia’s rules submitted September 26, 2006 (as clarified on November 6, 2006) and July 26, 2012, became state effective on March 27, 2006, and August 9, 2012, respectively. EPA is taking final action to approve changes mentioned above in the July 26, 2012, and September 26, 2006, SIP revisions to update the State’s existing

SIP-approved PSD program to be consistent with federal NSR regulations (at 40 CFR 52.21) and the CAA as well as changes to Air Quality Rules 391-3-1-.01, .02(2) and .03.

III. Response to Comments

EPA received one set of comments on the January 14, 2013, proposed rulemaking from GreenLaw (hereafter referred to as the “Commenter”). A copy of these comments can be found in the docket for today’s rulemaking at www.regulations.gov using docket ID: EPA-R04-OAR-2012-0622. The Commenter submitted three comments one of which supports EPA’s proposed January 14, 2013, actions to approve the PM_{2.5} PSD Increments, Surrogate Policy repeal and extension of the Fugitives Emissions Rule stay into the Georgia SIP in accordance with the CAA. EPA appreciates the Commenter’s support of the Agency’s action to ensure Georgia’s PSD permitting program is consistent with federal NSR permitting requirements. To the extent that the comments supported EPA’s proposed actions, and the final actions being taken today, EPA need not provide a response to those comments. A summary of and response to the comments potentially adverse to today’s action is provided below.

Comment: The Commenter states that EPA cannot approve a SIP submittal that includes the PM_{2.5} SMC and SILs. The Commenter cites to the D.C. Circuit Court’s January 22, 2013, court decision which vacated and remanded back to EPA the SILs and vacated the SMC citing the monitoring provisions exceeded EPA’s authority. Further, the Commenter affirms that the changes proposed for approval simply change the date of incorporation by reference but that EPA should clarify in its final rulemaking that it is “denying approval” of SILs and SMCs into

the Georgia SIP.

Response: With regard to the PM_{2.5} SILs, EPA never proposed approval of Georgia's submission as to those provisions. As a result, EPA is not now taking any action regarding Georgia's PM_{2.5} SILs submission. With regard to the PM_{2.5} SMC provisions, EPA did propose approval of those provisions but in light of the D.C. Circuit's January 22, 2013, court order, EPA is not now taking final action on EPA's January 14, 2013, proposal regarding Georgia's PM_{2.5} SMC submission. EPA will consider Georgia's January 26, 2012, SIP revision (and EPA's previous proposal) with regard to the PM_{2.5} SILs and SMC thresholds in an action separate from today's rulemaking.

IV. Final Action

EPA is taking final action to approve, into the Georgia SIP, portions of Georgia's September 26, 2006 (as clarified on November 6, 2006) and July 26, 2012, SIP revisions adopting federal regulations amended in the October 20, 2010, PM_{2.5} PSD Increment-SILs-SMC rule; the June 3, 2010, CO₂ Biomass Deferral Rule; and the March 30, 2011, Fugitive Emissions Interim Rule, amendments regarding the PM_{2.5} Grandfathering Provision, definition changes regarding testing and monitoring, and changes regarding exemptions from the requirement to obtain a SIP permit and exemptions for incinerators. EPA is taking final action to approve these aforementioned changes to Georgia's SIP because they are consistent with section 110 of the CAA and current EPA regulations regarding NSR permitting.

EPA is not, however, taking final action to approve in this rulemaking the portion of Georgia's July 26, 2012, SIP revision incorporating the PM_{2.5} SILs and SMC thresholds and provisions promulgated in EPA's PM_{2.5} PSD Increment-SILs-SMC Rule. EPA is also not taking final action to approve in this rulemaking Rules 391-3-1-.02(www) – *Sewage Sludge Incineration*, 391-3-1-.03(9) – *Permit Fees*, 391-3-1-.02(8)(b) – *New Source Performance Standards* and 391-3-1-.02(9)(b) – *Emissions Standards for Hazardous Air Pollutants*, which were included in Georgia's July 26, 2012, SIP revision, but are not part of Georgia's SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 27, 2013.

A. Stanley Meiburg,

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart (L) - Georgia

2. Section 52.570 is amended in the paragraph (c) table by revising the entries for “391-3-1-.01,” “391-3-1.02(2)(c),” “391-3-1.02(7)” and “391-3-1.03” to read as follows:

§52.570 Identification of plan.

* * * *

(c) * * *

EPA Approved Georgia Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
391-3-1-.01	Definitions	8/9/12	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*
391-3-1-.02(2)	Emission Standards			
**	**	*	*	*

391-3-1.02(2)(c)	Incinerators	8/9/12	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*

391-3-1-.02(7)	Prevention of Significant Deterioration of Air Quality (PSD)	8/9/12	<p>[Insert date of publication in <u>Federal Register</u>]</p> <p>[Insert citation of publication]</p>	<p>As of [Insert date of publication in <u>Federal Register</u>] EPA is approving a revision to 391-3-1-.02(7) to incorporate by reference the version of 40 CFR 52.21 as of July 20, 2011. <i>See</i> [Insert citation of publication] with the exception of the PM_{2.5} SMC and SILs thresholds and provisions promulgated in the October 20, 2010 PM_{2.5} PSD Increment-SILs-SMC Rule at 40 CFR 52.21(i)(5) and (k)(2) respectively.</p> <p>September 9, 2011(76 FR 55572)-Georgia's PSD Rule 391-3-1-.02(7) incorporates by reference the regulations found at 40 CFR 52.21 as of June 3, 2010, with changes. This EPA action is approving the incorporation by reference with the exception of the following provisions: (1) the provisions amended in the Ethanol Rule (72 FR 24060) which exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t); and (2) the administrative regulations amended in the Fugitive Emissions Rule (73 FR 77882). Additionally, this EPA action is not approving the “automatic rescission clause” provision at 391-3-1-.02(7)(a)2.(iv). This rule contains NO_x as a precursor to ozone for PSD and NSR.</p>
**	**	*	*	*

391-3-1-.03	Permits	8/9/12	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Changes specifically to (8)—Permit Requirements.
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[FR Doc. 2013-07978 Filed 04/08/2013 at 8:45 am; Publication Date: 04/09/2013]